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# Case Analysis of Foss v. Harbottle

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## ABSTRACT

*This paper contains the case law which explains about the Majority rule in the company law. While going through this paper one will acknowledge about the minute details of historical and prominent case of Foss v. Harbottle. Facts and cause of action gives a brief idea of basis of the case on which it stands. The Legal issues it bears on which the whole case is argued. Arguments have a enormous impact on the decision of the case. The major principle used is mention in the analysis. Observation has been discussed to give a overview of the case. As mentioned above, after going through this article the reader will get basic idea and an example of rules mentioned below.*

**Keywords:** *Majority Rule, Share holder, proper plaintiff rule.*

## I. INTRODUCTION

**Proper plaintiff rule** and **Majority rule** was firstly discussed in the prominent and landmark case **Foss v. Harbottle** which is an English case. This rule has exceptions as personal rights enjoy strong exemption to its use. This article will focus on the path and development of the mentioned case and signifies the prominence of personal rights of outside members who are at the formers purview.

Title of the case: **Foss v Harbottle**

Citation: **[1843] 67 ER 189, (1843) 2 Hare 461**

Court: **Court of Chancery**

Bench: **Wigram VC, Jenkins LJ**

Petitioner: **Richard Foss and Edward Starkie Turton**

Defendants: **Thomas Harbottle & Other's**

## II. FACTS

- "Victoria Park Company" was incorporated in the year 1837.
- It was incorporated under Special Act of Parliament.

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- The object of the company was to convert 180 acres of land into Ornamental Park under the township of Rushohme, Charlton upon Medlock in country of Lancaster.

### III. CAUSE OF ACTION

- Fraudulent transaction through which assets of the company has been misappropriated.
- Insufficiency of qualified Director in company
- Company does not have office clerk.

### IV. RELIEF SOUGHT

By shareholder on behalf of company.

Director  compensate  company

### V. LEGAL ISSUES INVOLVED

(A) **Issue** – Can shareholder sue on behalf of the company?

(B) **Arguments by** –

**Shareholder** –

Directors are trustees and shall be held accountable.

**Directors-**

Plaintiff does not have any right to sue us on behalf of company are not duly authorized by company.

### VI. COURT HELD THAT

- Shareholder and Outsider cannot sue on behalf of company as corporation is a separate legal entity differ from its shareholder
- Company may sue and get sued in its own name.
- Member may not take any legal action on behalf of the company and if the company has any right then company can sue only not members.
- In this case, it is the company which has suffered loss and not any person in general.
- Member authorized (board resolution & ordinary resolution) by company can only institute suit on its behalf
- Minority should have exhausted all the possibilities of Redressal within internal forum

- Court will not intervene in such act where majority of shareholder can satisfy such irregular acts (outside article of association but inside memorandum of association )

### **(A) Two principle established by court in the regard**

#### **1) Majority Principle Rule**

Alleged wrong if can be satisfied by majority then in those cases court will intervene (Rule of Non-interference).

#### **2) Proper Plaintiff Rule**

- Wrong done to the company
- Due to misfeasance by director

Only company can sue in order to enforce the rights and members cannot do so on behalf of company, company being a separate legal entity.

### **(B) Observation from judgement**

The principle established by court i.e. majority principle rule and proper plaintiff rule are harsh and unjust on minority shareholder as although substantive rights have been provided to them but still they were barred from obtaining justice and has to submit to the wrongdoers i.e. the majority as they were the one who controls the company and minority members have no say due to their law strength.

## **VII. EXCEPTIONS TO THE RULE OF MAJORITY**

To alleviate this rigidity four exception to the general rule were put down where minority is permitted to litigate.

- 1) Ultra Virus and illegal acts (Bharat Industries vs Kanhaiyah Lal )
- 2) Act outside Article of Association has been done w/o alteration or The limit or restriction provided in Article of Association has not been observed by the majority (Baillie vs Oriental telephone & Electric Company Limited)
- 3) Invasion of claimant's personal rights in his capacity as a member (Joseph vs Jos )
- 4) Fraud on minority has been conducted by majority ( Cook vs Deeps)

## **VIII. CONCLUSION**

Foss v. Harbottle has a unique place in English jurisprudence. Number of statutes which relates with company law in various nations has their roots in their outcome. Due to the tactics played by majority stakeholders over minority rights, the access of the rule of majority which was

mentioned in the above case had been exposed to various exceptions. Majority leadership cannot be the whole and sole in decision making process.

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